



Securities Industry Association

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July 12, 2001

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Division of Market Regulation
Securities and Exchange Commission
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Washington, D.C. 20549

SECURITIES AND EXCHANGE COMMISSION
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DIVISION OF MARKET REGULATION

Dear Mr. Macchiaroli:

Based on recent discussions and correspondence with you, the SIA's Capital Committee requests that the Division of Market Regulation not recommend any enforcement action if broker-dealers compute capital charges on aged fail to deliver transactions involving non-marketable securities in the manner prescribed below:

The Securities and Exchange Commission ("SEC")'s Rule 15c3-1(c)(2)(ix) generally requires that, after a fail to deliver transaction has remained unsettled for a specified period, a broker-dealer must take a capital charge based upon the extent to which the security's contract price exceeds its market value in addition to a haircut on the underlying security as prescribed within SEC Rule 15c3-1(c)(2)(vi).

As a result broker-dealers are frequently required to take substantial capital charges for aged fail to deliver transactions in foreign and domestic securities treated as non-marketable under SEC Rule 15c3-1, (or interpretations thereof), as the haircut required is stipulated as 100% of the market value of the underlying security. Delays in the settlement of these transactions are usually a result of differences in settlement systems, cycles and clearance practices between markets, rather than due to counter-party failure to perform. These transactions are collateralized with determinable exposure and based on our experience broker-dealer losses have been *de minimis* due to the failure to consummate aged fail to deliver transactions. The framework for capital charges has not changed to reflect the globalization of capital markets and advances in technology that have led to more integration and efficiency in these markets. Technology has also afforded broker-dealers more effective means of monitoring and reducing the inherent risk in these transactions. The prohibitive capital treatment of these transactions has precipitated the shifting of certain activities to offshore entities, away from US regulatory scrutiny.



Michael Macchiaroli

June 25, 2001

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In light of the above facts, the Committee feels it is prudent at this time to adopt a phased in approach to the capital charge for aged fail to deliver transactions on non-marketable securities based upon the broker-dealer's ability to demonstrate an adequate process for monitoring risk associated with aged fails.

The charge to capital would consist of a haircut on the underlying security, as indicated below, increased by any excess of the contract value over the market value of the underlying security or decreased by any excess of the market value of the underlying security over the contract value (not to increase capital) on the transaction.

Haircut Calculation:

15% after 5 business days

50% after 14 business days

75% after 21 business days

100% after 28 business days

We look forward to discussing this proposal with you at your earliest convenience. If you have any questions regarding the above please contact me at (347)643-4746 or George Kramer, the Committee's staff adviser at (202) 296-9410.

Very truly yours,

Cheryl M. Kallem
Chair, SIA Capital Committee

cc: Elaine Michitsch, New York Stock Exchange, Inc.